

§ 213.1

8 CFR Ch. I (1–1–04 Edition)

§ 213.1 Admission under bond or cash deposit.

The district director having jurisdiction over the intended place of residence of an alien may accept a public charge bond prior to the issuance of an immigrant visa to the alien upon receipt of a request directly from a United States consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond. Upon acceptance of such a bond, the district director shall notify the U.S. consular officer who requested the bond, giving the date and place of acceptance and the amount of the bond. The district director having jurisdiction over the place where the examination for admission is being conducted or the special inquiry officer to whom the case is referred may exercise the authority contained in section 213 of the Act. All bonds and agreements covering cash deposits given as a condition of admission of an alien under section 213 of the Act shall be executed on Form I-352 and shall be in the sum of not less than \$1,000. The officer accepting such deposit shall give his receipt therefor on Form I-305. For procedures relating to bond riders, acceptable sureties, cancellation or breaching of bonds, see § 103.6 of this chapter.

[29 FR 10579, July 30, 1964, as amended at 32 FR 9626, July 4, 1967; 62 FR 10349, Mar. 6, 1997]

PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

Sec.

213a.1 Definitions.

213a.2 Use of affidavit of support.

213a.3 Notice of change of address.

213a.4 Actions for reimbursement, public notice, and congressional reports.

213a.5 Relationship of this part to other affidavits of support.

AUTHORITY: 8 U.S.C. 1183a; 8 CFR part 2.

SOURCE: 62 FR 54352, Oct. 20, 1997, unless otherwise noted.

§ 213a.1 Definitions.

As used in this part, the term:

Domicile means the place where a sponsor has a residence, as defined in section 101(a)(33) of the Act, in the

United States, with the intention to maintain that residence for the foreseeable future, *provided*, that a permanent resident who is living abroad temporarily shall be considered to be domiciled in the United States if the permanent resident has applied for and obtained the preservation of residence benefit under section 316(b) or section 317 of the Act, *and provided further*, that a citizen who is living abroad temporarily shall be considered to be domiciled in the United States if the citizen's employment abroad meets the requirements of section 319(b)(1) of the Act.

Federal poverty line means the level of income equal to the poverty guidelines as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902 that is applicable to a household of the size involved. For purposes of considering the Form I-864, Affidavit of Support Under Section 213A of the Act, the Service and Consular Posts will use the most recent income-poverty guidelines published in the FEDERAL REGISTER by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the FEDERAL REGISTER.

Household income means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the sponsor's income and may also include the incomes of any individuals who either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year, even if such dependents do not live at the same residence as the sponsor.

Household size means the number obtained by adding: (1) The sponsor and all persons living at the same residence with the sponsor who are related to the sponsor by birth, marriage, or adoption; (2) all persons whom the sponsor has claimed as a dependent on the sponsor's Federal income tax return for

the most recent tax year, even if such persons do not live at the same residence as the sponsor; and (3) the number of aliens the sponsor has sponsored under any prior Forms I-864 for whom the sponsor's support obligation has not terminated, plus the number of aliens to be sponsored under the current Form I-864, even if such aliens do not or will not live at the same residence as the sponsor.

Immigration Officer, solely for purposes of this part, includes a Consular Officer, as defined by section 101(a)(9) of the Act, as well as an Immigration Officer, as defined by §103.1(j) of this chapter.

Income means an individual's gross income, for purposes of the individual's Federal income tax liability, including a joint income tax return.

Intending immigrant means any beneficiary of an immigrant visa petition filed under section 204 of the Act, including any alien who will accompany or follow-to-join the principal beneficiary.

Means-tested public benefit means either a Federal means-tested public benefit, which is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal means-tested public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, or a State means-tested public benefit, which is any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State has determined to be a means-tested public benefit. No benefit shall be considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b) or 423(d) of Public Law 104-193.

Program official means the officer or employee of any Federal, State, or local government agency or of any private agency that administers any means-tested public benefit program who has authority to act on the agency's behalf in seeking reimbursement of means-tested public benefits.

Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.

Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act.

Sponsor means a person who either is eligible to execute or has executed an affidavit of support under this part.

Sponsored immigrant means an immigrant on whose behalf a sponsor has executed an affidavit of support under this part, including any spouse or child who will accompany or follow-to-join the beneficiary of an immigrant visa petition filed by a sponsor.

§ 213a.2 Use of affidavit of support.

(a) *General.* (1) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless a sponsor has executed on behalf of the intending immigrant a Form I-864, Affidavit of Support Under Section 213A of the Act, in accordance with section 213A of the Act, this section, and the instructions on Form I-864. An affidavit of support is executed when a sponsor signs a Form I-864 before a notary public or an Immigration or Consular Officer and that form I-864 is submitted to an Immigration or Consular officer. The sponsor must execute a separate affidavit of support for each visa petition beneficiary and for each alien who will accompany or follow-to-join a visa petition beneficiary. For any spouse or children immigrating with a sponsored immigrant, the sponsor may execute an affidavit of support by submitting photocopies of the Form I-864 and all accompanying documentation, but each photocopy of the Form I-864 must have an original signature. Under this rule, a spouse or child is immigrating with a sponsored immigrant if he or she is listed in Part 3 of Form I-864 and applies for an immigrant visa or adjustment of status within 6 months of the date the Form I-864 is originally signed. The signature on the Form I-864, including photocopies, must be notarized by a notary public or signed before an Immigration or Consular Officer.

(2)(i) Except for cases specified in paragraph (a)(2)(ii) of this section, paragraph (a)(1) of this section applies

to any application for an immigrant visa or for adjustment of status filed on or after December 19, 1997, in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as:

(A) An immediate relative under section 201(b)(2)(A)(i) of the Act;

(B) A family-based immigrant under section 203(a) of the Act; or

(C) An employment-based immigrant under section 203(b) of the Act, if a relative of the intending immigrant either filed the employment-based immigrant petition or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the intending immigrant.

(ii) Paragraph (a)(1) of this section shall not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act; or

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued before December 19, 1997.

(b) *Affidavit of support sponsors.* The following individuals must execute Form I-864 on behalf of the intending immigrant in order for the intending immigrant to be found admissible on public charge grounds:

(1) *For immediate relatives and family-based immigrants.* The person who filed the immigrant visa petition, the approval of which forms the basis of the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status as an immediate relative or as a family-sponsored immigrant, must execute a Form I-864 on behalf of the intending immigrant.

(2) *For employment-based immigrants.* A relative of an intending immigrant seeking an immigrant visa under section 203(b) of the Act who either filed the immigrant visa petition on behalf of the intending immigrant or owns a significant ownership interest in an en-

tity that filed an immigrant visa petition on behalf of the intending immigrant.

(c) *Sponsorship requirements—(1) General.* A sponsor must:

(i) Be at least 18 years of age;

(ii) Be domiciled in the United States or any territory or possession of the United States; and

(iii)(A) Be a citizen of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(A) or (B) of this section; or

(B) Be a citizen or national of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(C) of this section or if the individual is a joint sponsor.

(2) *Demonstration of ability to support sponsored immigrants.* In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain an annual income of at least 125 percent of the Federal poverty line. If the sponsor is on active duty in the Armed Forces of the United States (other than active duty for training) and the intending immigrant is the sponsor's spouse or child, the sponsor's income must equal at least 100 percent of the Federal poverty line.

(i) *Proof of income.* (A) The sponsor must file with the Form I-864 a copy of his or her Federal income tax returns for each of the 3 most recent taxable years, if he or she had a legal duty to file. By executing Form I-864, the sponsor certifies under penalty of perjury under United States law that each return is a true and correct copy of the return that the sponsor filed with the Internal Revenue Service for that taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for any of the 3 most recent tax years, the sponsor must explain why he or she had no legal duty to file a Federal income tax return for each year for which no Federal income tax return is available. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income.

(C)(1) The sponsor's ability to meet the income requirement will be determined based on the sponsor's household income. The sponsor may rely entirely on his or her own income as his or her household income if it is sufficient to meet the requirement. If needed, the sponsor may include in his or her household income the incomes of other individuals if they either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year. In order for the Immigration Officer or Consular Officer to consider the income of any of these individuals, the sponsor must include with the Form I-864 a written contract on Form I-864A between the sponsor and each other individual on whose income the sponsor seeks to rely.

Under this written contract each other individual must agree, in consideration of the sponsor's signing of the Form I-864, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the sponsored immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support. The sponsor, as a party to the contract, may bring suit to enforce the contract. The sponsored immigrants and any Federal, State, or local agency or private entity that provides a means-tested public benefit to a sponsored immigrant are third party beneficiaries of the contract between the sponsor and the other individual or individuals on whose income the sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I-864A, even if the sponsor will rely on the income of the sponsored immigrant to meet the income require-

ment. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse or children, then the sponsored immigrant whose income is to be relied on must sign the Form I-864A.

(2) If the sponsor relies on the income of any other individual, the sponsor must also attach that individual's Federal income tax returns for each of the 3 most recent tax years. That individual must certify, under penalty of perjury, on Form I-864A that each tax return submitted is a true and correct copy of the Federal income tax return filed with the Internal Revenue Service. If that individual has no legal obligation to file a Federal income tax return, he or she must explain and submit other evidence of annual income. If the individual whose income the sponsor will rely on is not lawfully claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, then the sponsor must also attach proof of the relationship between the sponsor and that individual and proof of residency in the sponsor's residence during at least the preceding 6 months.

(ii) *Proof of employment or self-employment.* The sponsor must attach evidence of current employment which provides the sponsor's salary or wage, or evidence of current self employment. If the sponsor is unemployed or retired, the sponsor must state the length of his or her unemployment or retirement. The same information must be provided for any other person whose income is used to qualify under this section.

(iii) *Determining the sufficiency of an affidavit of support.* The sufficiency of an affidavit of support shall be determined in accordance with this paragraph.

(A) *Income.* The sponsor shall first calculate the total income attributable to the sponsor under paragraph (c)(2)(i)(C) of this section.

(B) *Number of persons to be supported.* The sponsor shall then determine his or her household size as defined in § 213a.1.

(C) *Sufficiency of Income.* The sponsor's income shall be considered sufficient if the household income calculated under paragraph (c)(2)(iii)(A) of this section would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in § 213a.1, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for training) in the Armed Forces of the United States and the intending immigrant is the sponsor's spouse or child.

(iv) *Inability to meet income requirement.* If the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible unless the sponsor and/or the intending immigrant demonstrates significant assets or a joint sponsor executes a separate Form I-864.

(A) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets. A sponsored immigrant may submit evidence of the sponsored immigrant's assets as a part of the affidavit of support, even if the sponsored immigrant is not required to sign a Form I-864A. The assets of any person who has signed a Form I-864A will also be considered in determining whether the assets are sufficient to meet this requirement. The combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must exceed five times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force under this section).

(B) *Joint sponsor.* A joint sponsor must execute a separate Form I-864 on behalf of the intending immigrant(s) and be willing to accept joint and several liability with the sponsor. A joint sponsor must meet the eligibility requirements under paragraph (c)(1) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the

joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section.

(v) *Immigration or Consular Officer's determination of insufficient income and/or assets.* Notwithstanding paragraphs (c)(2)(iii)(C) and (c)(2)(iv) (A) and (B) of this section, an Immigration Officer or Consular Officer may determine the income and/or assets of the sponsor or a joint sponsor to be insufficient if the Immigration Officer or Consular Officer determines, based on the sponsor's or joint sponsor's employment situation, income for the previous 3 years, assets, or receipt of welfare benefits, that the sponsor or joint sponsor cannot maintain his or her income at the required level.

(vi) *Verification of employment, income and assets.* The Government may pursue verification of any information provided on or with Form I-864, including information on employment, income, or assets, with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration.

(vii) *Effect of fraud or material concealment or misrepresentation.* If the Consular Officer or Immigration Officer finds that the sponsor or joint sponsor has concealed or misrepresented facts concerning income, or household size, or any other material fact, the Consular Officer or Immigration Officer shall conclude that the affidavit of support is not sufficient to establish that the sponsored immigrant is not likely to become a public charge, and the sponsor or joint sponsor may be liable for criminal prosecution under the laws of the United States.

(d) *Legal effect of affidavit of support.* Execution of a Form I-864 under this section creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. The sponsored immigrant, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, may seek enforcement

of the sponsor's obligations through an appropriate civil action.

(e) *Termination of support obligation.*

(1)(i) The sponsor's support obligation with respect to a sponsored immigrant terminates by operation of law when the sponsored immigrant:

(A) Becomes a citizen of the United States;

(B) Has worked, or can be credited with, 40 qualifying quarters of work; *provided*, that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives any Federal means-tested public benefit;

(C) Ceases to hold the status of an alien lawfully admitted for permanent residence and has departed the United States; or

(D) Dies.

(ii) The sponsor's support obligation also terminates if the sponsor dies.

(2) The termination of the sponsor's support obligation does not relieve the sponsor (or the sponsor's estate) of any reimbursement obligation under section 213A(b) of the Act that accrued before the support obligation terminated.

(f) In the case of an alien who seeks to follow-to-join the principal sponsored immigrant, as provided for by section 203(d) of the Act, the same sponsor who filed the visa petition and affidavit of support for the principal sponsored immigrant must, at the time that the alien seeks to follow-to-join the principal sponsored immigrant, sign an affidavit of support on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant. If that sponsor has died, then the alien who seeks to follow-to-join the principal sponsored immigrant shall be held to be inadmissible, unless another person, who would qualify as a joint sponsor if the principal sponsor were still alive, submits on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant, an affidavit of support that meets the requirements of this section. If the original sponsor is deceased and no other eligible sponsor is available, the principal sponsored immigrant may sign an affidavit of support on behalf of the alien seeking to follow-to-join the principal immigrant, if the principal spon-

sored immigrant can meet the requirements of paragraph (c) of this section.

[62 FR 54352, Oct. 20, 1997; 62 FR 60122, Nov. 6, 1997; 62 FR 64048, Dec. 3, 1997]

§ 213a.3 Notice of change of address.

(a) *General.* If the address of a sponsor (including a joint sponsor) changes for any reason while the sponsor's support obligation under the affidavit of support remains in effect with respect to any sponsored immigrant, the sponsor shall file Form I-865, Sponsor's Notice of Change of Address, with the Service no later than 30 days after the change of address becomes effective.

(b) *Civil penalty—(1) Amount of penalty.* (i) Except as provided in paragraph (b)(1)(ii) of this section, if the sponsor fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act.

(ii) If the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act.

(2) *Procedure for imposing penalty.* The procedure for imposing a civil penalty under this paragraph follows that which is established at 8 CFR part 280.

(c) *Change of address.* If the sponsor is an alien, filing Form I-865 under this section does not satisfy or substitute for the change of address notice required under § 265.1 of this chapter.

§ 213a.4 Actions for reimbursement, public notice, and congressional reports.

(a) *Requests for reimbursement.* Requests for reimbursement under section 213A(b)(2) of the Act must be served by personal service, as defined by § 103.5a(a)(2) of this chapter. The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the types of means-

tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. Prior to filing a lawsuit against a sponsor to enforce the sponsor's support obligation under section 213A(b)(2) of the Act, a Federal, State, or local governmental agency or a private entity must wait 45 days from the date it issues a written request for reimbursement under section 213A(b)(1) of the Act. If a sponsored immigrant, a Federal, State, or local agency, or a private entity sues the sponsor and obtains a final civil judgment against the sponsor, the sponsored immigrant, the Federal, State, or local agency, or the private entity shall mail a certified copy of the final civil judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536. The copy should be accompanied by a cover letter that includes the reference "Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act." Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(b) Federal, State, and local government agencies should issue public notice of determinations regarding which benefits are considered "means-tested public benefits" prior to December 19, 1997, the date the new affidavit of support goes into effect, or as soon as possible thereafter. Additional notices should be issued whenever an agency revises its determination of which benefits are considered "means-tested public benefits."

(c) *Congressional reports.* (1) For purposes of section 213A(i)(3) of the Act, a sponsor shall be considered to be in compliance with the financial obligations of section 213A of the Act unless the sponsored immigrant or a Federal, State, or local agency or private entity has sued the sponsor, obtained a final judgment enforcing the sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act, and mailed a certified copy of the final judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536.

(2) If a Federal, State, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the Service's Statistics Branch. The written notice should include the reference "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

§213a.5 Relationship of this part to other affidavits of support.

Nothing in this part precludes the continued use of Form I-134, Affidavit of Support (other than INA section 213A), or of Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian, in any case, other than a case described in §213a.2(a)(2), in which these forms were used prior to enactment of section 213A of the Act. The obligations of section 213A of the Act do not bind a person who executes Form I-134 or Form I-361, although the person who executes Form I-361 remains subject to the provisions of section 204(f)(4)(B) of the Act and of §204.4(i) of this chapter.

PART 214—NONIMMIGRANT CLASSES

Sec.

214.1 Requirements for admission, extension, and maintenance of status.

214.2 Special requirements for admission, extension, and maintenance of status.